

**Before The  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Conference on	)	WC Docket 02-269
Accounting Issues	)	DA 02-3449

**COMMENTS OF THE  
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

**I. Introduction**

The National Association of State Utility Consumer Advocates (“NASUCA”) offers these comments in response to the Request for Comment (“Request”) released in this docket on December 12, 2002. NASUCA is an association of 42 consumer advocates in 40 states and the District of Columbia. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts.

The Federal-State Joint Conference on Accounting Issues (“Joint Conference”), through this Request, “seeks public comment with respect to its comprehensive review of regulatory accounting and related reporting requirements.” Request, at [1].

The Federal Communications Commission (“Commission”) convened the Joint Conference to “provide a forum for an ongoing dialogue between the Commission and the states in order to ensure that regulatory accounting data and related information filed by carriers are adequate, truthful, and thorough.” Request, at [2].

Pursuant to the directive of 47 U.S.C. § 161, the Commission is required biennially to review its regulations pertaining to telecommunications service to “determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic

competition between providers of such service.” See Request, at [1]. The Commission has conducted several phases of its biennial review thus far, through the issuance of Notices of Proposed Rulemakings (“NPRMs”). Interested parties have provided comments on the Commission’s proposals regarding its accounting rules and the Automated Reporting Management Information System (“ARMIS”) reporting requirements that apply to certain incumbent local exchange carriers.<sup>1</sup> As a result of the Commission’s review thus far, some existing accounts were eliminated and the Commission declined to adopt the recommendations of various parties to add several new accounts.<sup>2</sup>

These comments address the key broad issues regarding regulatory accounting and related reporting requirements on which the Joint Conference requests comment. In this regard, the mission of the Joint Conference is laudable –“to ensure that regulatory and accounting reporting requirements are adequate and effective in the current market to protect consumers and carry out federal and state regulatory responsibilities.” Request, at [2].<sup>3</sup> It is extremely important for federal and state regulatory agencies to work together to “coordinate their efforts to ensure that regulatory accounting information is adequate and truthful.” Request, at [2]. To this end, the Joint Conference recognizes that:

Regulatory accounting data and related information filed by  
the telecommunications carriers is used by federal and state

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<sup>1</sup> See, e.g., *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting*, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286; Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, 16 FCC Rcd 19913 (2001) (*Phase II Accounting Order and Phase III Further Notice*), see 47 C.F.R. § 32 *et seq.*

<sup>2</sup> The Commission has stayed certain aspects of its previous Order, all of which are included in the Joint Conference’s specific issues on which it requests comment. See, e.g., *In the Matter of Federal-State Joint Conference On Accounting Issues; 2000 Biennial Regulatory Review—Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; and Local Competition and Broadband Reporting*, WC Docket No. 02-269, CC Docket Nos. 00-199, 80-286, and 99-301, Order, FCC 02-309 (rel. November 12, 2002).

<sup>3</sup> As discussed below, in order to be adequate and effective, reporting must also be timely.

telecommunications policymakers to fulfill various responsibilities, such as determining interstate access charges and intrastate retail rates, evaluating federal-state jurisdictional separations, setting rates for unbundled network elements, and calculating universal service support.

Request, at [2].

NASUCA agrees that there exist separate federal and state regulatory responsibilities, under which the accounting information filed by carriers is used for varying purposes. Given the continued market dominance of the carriers and the changing markets in which they operate, both federal and state regulators should be assured that they will have access to thorough, accurate and truthful accounting information on which to make informed decisions.

NASUCA's comments also address the need to retain certain specific accounts and add others because of the continuing dominance of the carriers in their markets, along with the need for state regulators, this Commission, and other stakeholders (including consumer advocates) to have access to information about the operations of the carriers. Where there is a continuing need for this information, the detriment of losing access to the information outweighs any benefit resulting from reducing the regulatory burden on the carriers.<sup>4</sup> This is especially true given the allegations of wrongdoing over the past year that have affected major telecommunications carriers such as Global Crossing, WorldCom, and Qwest.

Under the standard set for the Commission by 47 U.S.C. § 161, the account detail that is the subject of this inquiry should be retained. This is because even where there exists

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<sup>4</sup> The carriers already have forms established to capture this information, as a good business practice, information reported, as well as that *previously* reported, would be compiled *regardless* of reporting requirements. Therefore, the benefit to the carriers from eliminating reporting requirements is not significantly reduced expenses associated with reporting the data. Rather the benefits are the ability to insulate themselves from accountability, including fines, and from the threat of negative reactions that would result from false reporting. In addition, it is likely that any reduced expense will simply further increase the carriers' already robust profits, rather than lead to any benefits for consumers.

“meaningful economic competition” for local telecommunications service -- the criterion under § 161 -- the incumbent carriers may remain dominant in their markets, and detailed accounting is still necessary.<sup>5</sup> For residential consumers specifically, competition is minimal at best.<sup>6</sup>

## **II. Topics of Inquiry**

### *A. Inquiry on Broader Issues*

#### Question 1:

The Joint Conference asks for comment on “the respective roles of the state regulatory agencies and the Commission in maintaining the accuracy and reliability of regulatory accounts, and ... the Commission’s role in establishing consistency in minimum regulatory accounting standards nationwide.” Request, at [4]. The Joint Conference’s stated mission, quoted above, goes far in providing a response to this question, by recognizing the need for adequate and effective regulatory and accounting reporting requirements in the current market so that consumers are protected and federal and state responsibilities are carried out.

The Joint Conference understands that it would be in the public interest for the Commission and the states to work together to recognize the multiple uses of accounting and regulatory reporting information and to establish requirements that ensure such information is reliable, adequate, truthful and thorough. As is recognized by the Joint Conference, state and federal telecommunications policy makers use regulatory accounting data and related information for many purposes, including to determine interstate and intrastate rates, such as access charges, unbundled network element (“UNE”) charges and end-user rates; to evaluate

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<sup>5</sup> Clearly, all of the ILECs are still far more dominant in their local markets than AT&T was in the long distance market when the Commission found it to be “non-dominant.”

<sup>6</sup> The failure to address a specific proposal or question through these comments should not be deemed to represent acquiescence in the proposal.

jurisdictional separations; and to calculate universal service support. See Request, at [2].

Consistency of information is an important consideration given the national impact of setting access charge rates and calculating universal service support and, given that states need to perform comparative analyses for various purposes, especially in setting UNE rates.<sup>7</sup> In addition, it is important that the information necessary for the Commission and the states is timely in order to ensure that it is both a useful and an accurate representation of the carrier's most current practices.

To its credit, the Joint Conference does not entertain the suggestion considered by the Commission in previous phases of this proceeding: that the Commission only has the authority to collect information where it can identify a federal need.<sup>8</sup> Under that view, it is not a proper federal purpose for the Commission to collect reasonable amounts of information to establish a consistent national database on carriers. This is inconsistent with the Joint Conference's mission quoted above as well as the spirit and substance of the federal/state partnership embodied in the Telecommunications Act of 1996.

#### Question 2:

In light of 47 U.S.C. § 161, the Joint Conference poses the key question regarding whether the FCC has the authority to maintain accounts used solely by the states. See Request at [4]. The statute, 47 U. S.C. § 161, specifies that during the biennial review, the Commission “shall determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of service.” It is thus only when “meaningful economic competition” exists that the Commission is allowed to determine that an

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<sup>7</sup> It is difficult to see how states can be induced to establish intrastate support mechanisms without consistent national information on the costs of service. *Qwest Corp. v. FCC*, 258 F.3d 1191, 1203 (10<sup>th</sup> Cir. 2001).

<sup>8</sup> See, e.g., *Phase II Accounting Order* and *Phase III Further Notice*; ¶ 207.

accounting requirement is unnecessary.

In the telecommunications marketplace today, competition does not exist in many markets, and even where it does exist, it is not “meaningful economic competition” due to the continued dominance of incumbent carriers. Given this, the Commission continues to have the authority it has always had to require detailed accounting and reporting requirements.

Question 3:

The Joint Conference requests comment on the purpose of the various types of accounting including regulatory, taxation, financial and corporate accounting. See Request at [4]. Telecommunications carriers are required to keep accounting records for all these accounting purposes.

The requirement of regulatory accounting is valid as long as there are captive ratepayers and where the entity is still a dominant carrier, as is the case for local telecommunications carriers. Regulatory accounting ensures fairness for the customers of monopoly and dominant carriers.

If carriers had no monopoly customers and they were also not dominant carriers, there would be no need for regulatory accounting. Similarly, if carriers were not required to pay taxes, there would be no need to keep accounts for tax purposes. However, because neither of these scenarios is valid, carriers must be required to continue to maintain these various accounting records, including for regulatory purposes.

The existence of different kinds of accounting requirements highlights the fact that any one particular regulatory accounting requirement likely imposes only a small incremental burden on a carrier. The accounting needs of the real world are consistent with an appropriate level of regulatory accounting detail.

#### Question 4:

The Joint Conference requests comment on what lessons can be learned from the reporting requirements of other agencies such as the Securities and Exchange Commission, the Federal Energy Regulatory Commission, the Federal Trade Commission, the Department of Justice, the state Attorneys General and Secretaries of State. See Request at [4]. All of these agencies have in common the task of overseeing in various ways the entities operating within their jurisdiction, just as the Commission and state commissions have the same task regarding incumbent carriers. The ability of these government agencies to perform their respective oversight roles depends on fundamental and relevant information from the entities under their respective jurisdictions. Such information would not be forthcoming were it not for the various mandates by these agencies requiring the entities under their jurisdiction to provide it. The information is available precisely because it is required to be made available. Absent the requirements the regulated entities would have no motivation to provide such information.

The information filings required by the Securities and Exchange Commission's ("SEC") are probably the best example of a government agency requiring a variety of information for the SEC's purpose of protecting the interest of shareholders of public companies. The SEC requires disclosure of financial information in a variety of forms ranging from quarterly to annually. In fact, due to the heightened concerns over alleged misdeeds by various companies, the SEC is in the process of re-evaluating its reporting requirements to determine whether they are adequate.

In a similar vein, the Commission and the states should be wary of moving too fast to eliminate accounting and regulatory reporting requirements. Like the environment in the financial world of shareholders' interest, the current telecommunications environment of market

dominance and monopoly providers warrants heightened reporting requirements in order to protect the public interest, not a need to eliminate requirements.

Question 5:

The Joint Conference requests comment on regulatory accounting's role in the midst of movement from regulated monopoly carriers toward more competitive markets. See Request at [5]. As stated previously, as long as carriers remain dominant in the local exchange markets, there is still a need for regulatory accounting for the protection of the ratepayer. This includes monitoring carriers' costs, investment, and cost allocation practices. Premature deregulation would subject still-captive customers to the risk of the very abuses that the accounting and regulatory requirements were designed to prevent. This is especially important for residential consumers for whom the transition to a competitive market has just begun and will take a long time to complete.

Relaxation of accounting and reporting requirements should only come when the incumbent local exchange carriers are no longer dominant in their former monopoly service territories. In the *AT&T Non-dominance Order*, the Commission discussed its sixteen-year effort to recognize the growth of competition in the interstate interexchange market.<sup>9</sup> In that Order, the Commission found that AT&T lacked market power, and declared AT&T to be non-dominant.

*Id.*, ¶ 1.

Various indicia that the Commission examined for AT&T demonstrate the extent to which the current local exchange market lacks meaningful competition. The Commission found excess capacity in the interexchange market. *Id.*, ¶ 58. Excess capacity depends on the existence

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<sup>9</sup> *In the Matter of the Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order (October 23, 1995), 11 FCC Rcd 3271 (“*AT&T Non-dominance Order*”).

of widely-available competitors' facilities. *Id.*, ¶¶ 59, 61. No such facilities are ubiquitously available in the local exchange market.

The Commission found that long-distance customers showed significant demand elasticity, as they switch carriers at will. *Id.*, ¶ 63. Of course, in the local exchange market in many places in the nation, residential customers still lack any ability to switch local carriers. In addition, even where there exists a choice of providers, such as in SBC Ohio service territory, customers may not be able to switch from one competitive carrier to another without first switching back to the incumbent carrier. As is the case in many markets, effective CLEC-to-CLEC migration is not in place in SBC Ohio service territory.

In the *AT&T Non-dominance Order*, the Commission found that AT&T had an overall market share of 60 percent. *Id.*, ¶ 68. The Commission discussed the factors that made AT&T non-dominant at a 60 percent market share:

- Lack of control of bottleneck facilities (*id.*, ¶ 70);
- Facing “at least two full-fledged facilities-based competitors” (*id.*); and
- Customers having “numerous” choices (*id.*, ¶ 71).

Clearly, none of these factors can be found in the current local exchange market, particularly for residential customers.<sup>10</sup>

Many local markets across the country have not yet been “opened up,” however. Even where opened, the level of competition varies considerably. For this reason, the analysis of non-dominance must be conducted on an incumbent carrier-by-incumbent carrier basis.

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<sup>10</sup> Another factor the Commission examined was the impact of competition on the former monopolist's prices. The Commission found that AT&T's residential rates had decreased. *Id.*, ¶ 78. This is another impact from competition that is lacking on the local exchange level.

Question 6:

The Joint Conference requests comment on the necessity for additional accounting and reporting requirements to support regulatory efforts and goals. See Request at [5]. The Joint Conference provides several examples of current efforts and goals including establishing UNE prices, determining the costs of universal service programs and preventing cross-subsidization. Several additional questions are posed dealing with financial monitoring, financial problems of affiliates and the consequences of mergers. See Request at [5], Questions 7, 9 and 11.

As NASUCA states in more detail below, the Commission should reinstate the specific accounts and subaccounts that are the subject of the Joint Conference's Request. In addition, NASUCA continues to support the recommended additional detail proposed by state staffs and recommends that the Commission require several additional revenue subaccounts.

Finally, NASUCA reiterates here its concern over discontinuing the requirement for continuing property records.<sup>11</sup> The continued application of continuing property record requirements are a practical and significant tool in ensuring that monopoly power and market dominance do not thwart the transition to a full and fair competitive marketplace.

Question 7:

See response to Question 6.

Question 8:

The Joint Conference inquires into the impact of proposed changes to accounting requirements on local exchange carriers with fewer than two percent of the Nation's subscriber

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<sup>11</sup> See Initial Comments of The National Association of State Consumer Utility Advocates Concerning Continuing Property Records (CPR) (April 8, 2002) *In the Matter of 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 3; Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting*, CC Docket Nos. 00-199, 97-212, 80-286, and 99-301.

lines. See Request at [5]. Even though in the aggregate a company may have less than two percent of the nationwide subscriber lines, such a company has most likely seen and will continue to see less competition than those carriers with greater than two percent of the nation's access lines. This demonstrates why accounting and regulatory requirements are all the more necessary for the protection of these carriers' still captive customers. In addition, there are some carriers with less than two percent of the nation's access lines that are major carriers within the states in which they operate. Cincinnati Bell Telephone, for instance, has 798,409 access lines in a major metropolitan area in Ohio.<sup>12</sup> This is not a small carrier on par with a company like the Vaughnsville Telephone Company, which has 421 access lines.<sup>13</sup> As stated above, due to the captive nature of these companies' customers or the fact that they are still dominant in their markets, regulatory reporting is still a necessary requirement to assist the Commission and the states in carrying out their responsibilities as policymakers.

Question 9:

See response to Question 6.

Question 10:

The Joint Conference questions whether the FCC and/or states should increase the use of audits, including possibly joint federal/state audits. See Request at [5]. Audits are an effective -- currently underutilized -- enforcement tool for use by regulatory agencies to ensure that the information provided by carriers is consistent and accurate.

Especially in the current environment, there is a potential for abuse among the incumbent carriers. The market dominance, and in many cases monopoly position of the carriers, is a

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<sup>12</sup> See Annual Report of Cincinnati Bell Telephone Company to the Public Utilities Commission of Ohio for the year 2001, at Schedule 28. Cincinnati Bell also has access lines in contiguous portions of Kentucky and Indiana.

<sup>13</sup> See Annual Report of Vaughnsville Telephone Company to the Public Utilities Commission of Ohio for the year 2001, at Schedule 28.

condition that continues to provide carriers with an opportunity for abuse. In fact, as these carriers face more competition in the marketplace in the future, the incentive for one type of abuse, cross-subsidization of competitive operations by non-competitive operations, becomes even greater.

In addition, both federal and state regulators and other entities should be extremely diligent in monitoring the accuracy and consistency of all financial data reported by carriers. There have been too many instances of alleged unethical and, in some cases, unlawful behavior reported recently to allow the level of surveillance to be decreased.<sup>14</sup>

The use of audits as an enforcement tool by the Commission and the states, both separately and jointly can help provide the level of diligence necessary for regulatory policymakers to ensure protection of consumers against abuses.

Question 11:

See response to Question 6.

Question 12:

If the Commission accomplishes the changes described in these comments, this will represent substantial progress on the road to ensuring that “the FCC and/or the states fulfill their regulatory mandate to protect consumers and ensure the integrity of the telecom network.” Request, at [5]. As stated above, the Joint Conference was convened in furtherance of the Commission’s stated goal of trying “to ensure that regulatory accounting data and related

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<sup>14</sup> See e.g. “Former WorldCom CEO Built An Empire on Mountain of Debt,” *Wall Street Journal*, (December 31, 2002) at page A1; “Audit sleuths see through WorldCom shell game,” *Cleveland Plain Dealer*, (January 6, 2003) at page E1; “S.E.C. Files New Charges On WorldCom,” *New York Times*, (November 6, 2002) at page C1; “Quest Says It Found More Account Errors Affecting Earnings,” *Wall Street Journal*, (November 18, 2002) at page B4; “Quest Overstated Up to \$1.48 Billion in Revenue,” *New York Times*, (September 23, 2002) at page A22.

information filed by the carriers are adequate, truthful, and thorough.” Request, at [2]. Many policymakers recognize that achievement of that goal is inseparable from an additional two-fold commitment; specifically, a commitment to conduct independent and thorough field audits and to impose appropriate sanctions for violations of those standards.<sup>15</sup>

NASUCA agrees with Commissioners and members of the Joint Conference who support authorization for more stringent sanctions. Only sanctions that are both severe and enforced create meaningful disincentives for submitting accounting data that is inaccurate or incomplete. However, NASUCA shares the concern of policymakers over the Commission’s laxity in exercising its *current* audit and sanction authority. Furthermore, even without additional legislation, the Commission has authority to suspend licenses and to refer to the proper authorities for criminal investigation and prosecution, information brought to the Commission’s attention in the course of its regulatory oversight. Even when independent auditors have in recent years found egregious patterns of violations related to accounting data reporting requirements, such findings have all too often resulted in no fines. To the best of our knowledge, the Commission has never made a referral for a criminal investigation and potential prosecution even when audits have revealed indicia of accounting fraud. NASUCA will read with interest, and reply where appropriate, other parties’ proposals that will move us further along that road.

#### *B. Inquiry on Specific Issues*

The Joint Conference requests comment on whether specific accounts should be reinstated. The accounts in question include the account for directory revenues and subaccounts for depreciation and amortization expense, and customer service expense. Reinstating the details

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<sup>15</sup> E.g., *Hearings on The State of Competition in the Telecommunications Industry* before the Senate Committee on Commerce, Science and Transportation, 108<sup>th</sup> Congr., 1<sup>st</sup> Sess. (Jan. 14, 2003).

these accounts and subaccounts provide will increase the likeliness that the information captured in regulated accounts is adequate and thorough for use by both federal and state policymakers in determining interstate and intrastate rates, evaluating jurisdictional separations, setting UNE rates, calculating universal service support and preventing cross-subsidization.

In particular, as previously stated in comments filed by NASUCA, directory revenues continue to be a controversial issue in various state proceedings.<sup>16</sup> If Account 5230 is not reinstated, directory revenues will be included in Account 5200, Miscellaneous Revenue, along with various other types of revenue.<sup>17</sup> As a result, the amount of directory revenues would no longer be identifiable as a discrete item for any given company. Including directory revenues with other types of revenue should not obscure this controversial revenue source. Instead, the FCC should reinstate Account 5230 so that directory revenues information will continue to be available in state proceedings.

NASUCA agreed with state staffs that there are several additional subaccounts and new accounts that should be added to the Uniform System of Accounts (“USOA”).<sup>18</sup> As recognized by state staffs, additional account detail will allow state staffs “to meet their data needs to implement the 1996 Act and to keep pace with changes in technology and the regulatory environment.”<sup>19</sup> The Joint Conference specifically requests comment on the addition of accounts to include Optical Switching, Switching Software, Loop and Interoffice Transport,

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<sup>16</sup> See Comments of the Ohio Consumers’ Counsel and The National Association of State Utility Consumer Advocates dated 12/21/00 *In the Matter of 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and Phase 3*, at p. 4, (“OCC/NASUCA 12/21/00 Comments”).

<sup>17</sup> Including rental revenue, corporate operations revenue, customer operations revenue, and other incidental regulated revenue. In addition, the increasing levels of UNE revenue are included as rental revenue, which will further obscure it and all other revenue included in Account 5200. NASUCA also states, on the next page of these comments, its support for separate accounts for UNE revenue.

<sup>18</sup> OCC/NASUCA 12/21/00 Comments, at pp. 5-6.

<sup>19</sup> *In the Matter of 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and Phase 3*, Notice of Proposed Rulemaking, ¶ 20, (rel. October 18, 2000).

Interconnection Revenue and Expense (with subaccounts for UNEs, Resale, Reciprocal Compensation and Other Interconnection Arrangements), and Universal Service Support Revenue and Expense.

The accounts and subaccounts on which comments are sought by the Joint Conference are reasonable and should be adopted. NASUCA also recommends, as it did in its Phase II comments, the adoption of revenue subaccounts for subscriber line charge revenue and switched and special access revenue.<sup>20</sup>

In addition, revenue received from interstate and intrastate universal service funds should be required to be reported in separate revenue subaccounts. As an example of the need for such detail, in Ohio, the carrier that is the recipient of the greatest amount of federal high cost universal service support currently includes that amount in Account 5082 – Switched Access Revenue. This account is allocated entirely to the interstate jurisdiction, despite the fact that the purpose of this support is to keep *local* rates low. This carrier’s local rates are among the highest in the state.

Each of these areas is one where states are and will be making significant decisions in the next few years. The decisions are unavoidable, and should be based on the most accurate and detailed information available. Further, the information, although predominantly used by state commissions, will also be used by state consumer advocates and other stakeholders.

### **III. Conclusion**

NASUCA commends the Commission for convening the Joint Conference to analyze the

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<sup>20</sup> OCC/NASUCA 12/21/00 Comments, at p.6.

Commission's accounting and reporting requirements. In light of the changing nature of both the telecommunications marketplace and the financial marketplace, diligence is needed to ensure that consumers are protected and federal and state regulators have the information necessary to carry out their respective responsibilities.

Respectfully submitted,

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